

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-012041

01/09/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

DGB DEVELOPERS INC

PAUL M RYBARSYK

v.

MICHAEL GOLDWATER, et al.

MONTGOMERY LEE

REMAND DESK CV-CCC

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Petitioner to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.<sup>1</sup> The reviewing court may not substitute its own discretion for

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<sup>1</sup> *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980); *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977);

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that exercised by an agency,<sup>2</sup> but must only determine if there is any competent evidence to sustain the decision.<sup>3</sup>

This matter has been under advisement and the Court has considered and reviewed the memoranda submitted.

**FACTS**

Walter Nader filed a complaint with the Registrar of Contractors against Petitioner, DGB Developers (DGB) alleging unworkmanlike performance in connection with the installation of a fireplace in his home. Mr. Nader filed his complaint one year after the work was completed.<sup>4</sup>

After an inspection was performed at the site, Mr. Nader's home, a complaint and citation was later filed by the Registrar of Contractors. It was mailed to DGB who failed to respond in the required time.

The Complaint clearly states:

In accordance with the provisions of A.R.S. § 32-1555,  
**YOU, THE RESPONDENT, ARE DIRECTED TO**  
**FILE YOUR WRITTEN ANSWER** to the attached  
complaint with the Registrar of Contractors **NO LATER**  
**THAN TEN (10) DAYS** after the date this Citation was  
mailed, as shown below.<sup>5</sup> (Emphasis in original Complaint).

The Citation was signed and mailed on March 8, 2002, and sent by registered mail. The Petitioner's answer was received by the Registrar of Contractors on March 27, 2002.

On April 1, 2002, the Registrar acknowledged in a letter to DGB that it had received its answer, on March 27, 2002, which was after the ten (10) day requirement and stated that a Default order had been issued earlier on March 27, 2002. DGB argues that they received the complaint on March 25, 2002, when Norman Clarke, principal of DGB had returned from out of the country. They filed a response to the Complaint on March 26, 2002, and their answer was timely and the Decision and Order must be vacated.

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<sup>2</sup> *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

<sup>3</sup> *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz. App. 432, 484 P.2d 201 (1971).

<sup>4</sup> Petitioner's Opening Brief p. 1

<sup>5</sup> Citation and Complaint Case no. M02-0642, Walter Nader v. DGB Developers, signed March 8, 2002.

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DGB filed a motion for reconsideration by the Registrar of Contractors but it was denied by the Registrar. This appeal followed. The Appellant raises only one issue on appeal. The Appellant argues that the Decision and Order rendering a default decision to DGB is void and therefore invalid because their response to the Complaint was timely.

**DISCUSSION**

Petitioner asserts that as a matter of law the Decision and Order against it is void, and therefore invalid, because his response was timely. The Petitioner states that he received the Decision on March 25, 2002, and responded to it on March 27, 2002, and the Appellee acknowledged receiving his answer. The Complaint from the Registrar to DGB was unambiguous as to when the Complaint was mailed, thereby beginning the proscribed time period for DGB to respond. The Petitioner argues that the ten (10) day time had not begun because he did not receive it until March 26, 2002, but fails to offer any authority for his claim that time begins to run when a complaint is received. Additionally, the Petitioner failed to offer any information or formula as to how it calculated the time and when that time would end, thereby making its answer timely.

This Court must evaluate whether the Petitioner's response was timely and whether the Registrar of Contractors abused its discretion.

I find that the Registrar of Contractors did not abuse its discretion when it entered a Default Order against DGB for failing to respond within the required time. The undisputed facts and law in this case provide sufficient and tenable grounds for the Registrar's administrative decision.

The judgment of default in this case should not be disturbed.

IT IS THEREFORE ORDERED affirming the judgment and order of the Registrar of Contractors.

IT IS FURTHER ORDERED remanding this matter back to the Arizona Registrar of Contractors for all further and future proceedings.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT